UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHERRY L. BODNAR, et al. **Plaintiffs** **v.** **BANK OF AMERICA, N.A.** **Defendants.**	**Case No. 5:14-cv-03224-EGS**

OBJECTION OF DAWN M. WEAVER

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INTRODUCTION

Before the Court is a proposed $27.5 million common fund settlement in a class action lawsuit against Bank of America based on improper overdraft fees charged to millions of its account holders. Class counsel seek more than $9 million in attorneys' fees plus costs, which they justify as a 33% recovery from the gross fund. This amount will reduce the gross settlement fund to $18.4 million, without even considering the costs of settlement administration and notice, which class counsel have not disclosed. Given nearly three million potential class members, these unknown costs are sure to be substantial.[1]

While class members will be paid relative to the number of overdrafts charged them, it appears that in some cases, class members will receive as little as $5.[2] At the same time, the parties have agreed to pay the class representative, Sherry Bodnar, $20,000 as a service fee. This amount is unwarranted, and unnecessarily reduces the benefits to the class even further. Ms. Bodnar's disproportionate award relative to the likely average recovery presents a clear conflict in interest, and places the adequacy of her representation of the class in question.

The settlement also contains a residual cy pres provision without giving any idea who will receive the funds. The fundamental lack of information before the Court makes its task of assessing the fairness of the settlement impossible.

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[1] *See* Plaintiff's Memorandum in Support of Unopposed Motion for Certification of a Settlement Class and Preliminary Approval of Class Action Settlement (hereinafter "Plaintiff's Memorandum"), Doc. 73, at 1 ("[t]he Settlement provides real benefits to almost three million Bank of America accountholders").

[2] *See* Plaintiff's Memorandum, Doc. 73, at 15 ("the Parties have agreed to a minimum distribution amount of $5 for a Settlement Class Members").

Class counsel also have not submitted their lodestar records for this Court to conduct a lodestar cross-check on their more than $9 million recovery. One thing is clear, a 33% award here would be excessive and unfair to the class. There is no reason for this Court to award anything above the 25% benchmark.

For these and other reasons, the proposed settlement is not fair, adequate and reasonable; it creates intra-class conflicts and implicates adequacy problems; and the proposed award of attorneys' fees is excessive.

STANDING AND PROCEDURES TO OBJECT

Objector's full name, address and telephone number is as follows:

Dawn Weaver
208 Via Morella
Encinitas, California 92024
(858) 829-3659
weavdm@gmail.com

Objector is a class member who has timely filed a claim and therefore has standing to make this objection. See Declaration of Dawn Weaver, Exhibit "A" hereto, incorporated by reference as though set forth in full. Objector is represented by Lightman & Manochi and Bandas Law Firm, PC. Chris Bandas, Esquire, of Bandas Law Firm does not presently intend on making an appearance for himself or his firm.

The statement of the objections and the grounds therefor are set forth below. Objector does not presently intend on appearing at the fairness hearing either in person or through counsel but asks that this objection be submitted on the papers for ruling at that time. Objector does, however, does reserve the right to appear through counsel at the fairness hearing. Objector also does not intend to call any witnesses at the fairness hearing.

Objector relies upon the documents contained in the Court's file in support of these objections. Ms. Weaver previously filed objections in the following cases: Mirakay et al v. Dakota Growers Pasta Co., Inc. et al., Case No. 3:13-cv-04429-JAP-LHG (D. N.J.); Natalie Pappas v. Naked Juice Co of Glendora Inc et al., Case No. 2:11-cv-08276-JAK-PLA (C.D. Cal.) (filed 9/2/2014); Wilkins v. HSBC Bank Nevada, N.A. et al., Case No. 1:14-cv-00190 (N.D. Ill) (filed 10/6/2014); Brown et al v. The Hain Celestial Group, Inc., Case No. 3:11-cv-03082-LB (N.D. Cal.) (filed 1/19/2016); Gay v. Tom's of Maine, Inc., Case No. 0:14-cv-60604-KMM (S.D. Fla.) (filed 12/30/2015); Klacko v. Diamond Foods, Inc., 9:14-cv-80005-BB, (S.D. Fla.) (filed 6/22/2015); Larsen et al v. Trader Joe's Company, Case No. 3:11-cv-05188-WHO (N.D. Cal.) (filed 6/5/2014); and Gehrich v. Chase Bank, *USA, N.A.*, Case No. 1:12-cv-5510 (N.D. Ill.) (filed 2/9/2015).

Objection is made to any procedures or requirements to object in this case that require information or documents other than those that are contained herein on grounds that such requirements seek irrelevant information to the objections, are unnecessary, unduly burdensome, are calculated to drive down the number and quality of objections to the settlement and violate Objector's and counsel's due process rights and/or Rule 23. Objection is further made by Objector's counsel and Objector to the extent the requirements to object would seek information and data covered by any of the following: attorney client privilege, attorney work product immunity, and/or confidential and proprietary business information privileges and immunities. Objection is made to the requirement of the signature of Objector where she is represented by counsel as unduly burdensome and violating the right of Objector to hire counsel and for counsel to sign pleadings on her behalf. Therefore, to the extent there are a small number of objections filed here, that fact should not be taken as an endorsement of this proposed settlement. Objection is made to any requirements or procedures to object other than those related to showing standing as a class member.

Objector incorporates by reference the arguments and authorities contained in other filed objections, if any, made in opposition to the fairness, reasonableness and adequacy of the proposed claims-made settlement, the adequacy of class counsel and to the proposed award of attorneys' fees and expenses that are not inconsistent with this objection.

OBJECTIONS

The Unduly Burdensome Requirements for Objecting in this Case Violate Due Process.

Class counsel have imposed improper requirements on objectors, improperly seeking to engage in discovery with the obvious intention of driving down the number of objections to the class action settlement. Objection is made to all requirements of objectors that do not relate to their standing in the class.

Among the demands placed on objectors, the settlement notice requires them to produce:

> The number of times in which you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case[.]

Objector has listed the number of times she has objected in the last five years with the date filed and caption for each case. Objector does not keep copies of the opinions or orders in those cases, which are public record and equally available to the parties, and should not be required to obtain them as a prerequisite for filing an objection. Objection is made to this improper requirement as a violation of her due process rights and as an attempt to impede her right to object under Rule 23 of the Federal Rules of Civil Procedure.

The settlement notice also requires objectors to produce:

> Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you or your counsel and any other person or entity[.]

Objection is made to this request as vague, confusing, unnecessary, and invasive of the attorney-client privilege. Objector will submit her client engagement letters, which are confidential and privileged, under seal, and intends to file a motion for protective order to ensure their protection.

The notice further requires Objector to provide:

> The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case[.]

Objection is made to this unduly burdensome request that has no relation whatsoever to Objector's standing to object in this class action settlement. Objector's attorneys do not keep a list of objections or orders and opinions, and any such information is equally available to all parties. This is an attempt to single out objectors and discourage objections.

Objector has standing to object in this class action settlement, and these unnecessarily burdensome requirements in the class notice represent a concerted effort to interfere with objectors' due process rights to object to the settlement under Rule 23.

The First Circuit recognizes that "[b]ecause parties to a settlement have a shared incentive to impose burdensome requirements on objectors and smooth the way to approval of the settlement, district courts should be wary of possible efforts by settling parties to chill objections." Bezdek v. Vibram USA, Inc., 809 F.3d 78, 84 (1st

Cir. 2015). These efforts should not be tolerated, as objectors "can be of immense help to a district court in evaluating the fairness of a settlement." See Redman v. RadioShack Corp., 768 F.3d 622, 629 (7th Cir.2014). "Objectors can encourage scrutiny of a proposed settlement and identify areas that need improvement. They can provide important information regarding the fairness, adequacy, and reasonableness of the settlement terms." Pallister v. Blue Cross and Blue Shield of Montana, 285 P.3d 562, 568 (Mont. 2012). "Objectors can also "add value to the class-action settlement process by . . . preventing collusion between lead plaintiff and defendants." UFCW Loc. 880-Retail Food Employers Jt. Pension Fund v. Newmont Min. Corp., 352 Fed. Appx. 232, 236 (10th Cir. 2009) (citation omitted); *see also* 2003 Committee Note, Rule 23(h) ("In some situations, there may be a basis for making an award to other counsel whose work produced a beneficial result for the class, such as . . . attorneys who represented objectors to a proposed settlement under Rule 23(e) or to the fee motion of class counsel").

Objection is thus made to these burdensome requirements, which violate Objector's due process rights in asserting her valid objections to the class action settlement as permitted under Rule 23. Further, in light of these requirements for objectors, the small number of objections should be given no weight in evaluating the fairness of the settlement.

The Proposed Settlement Is Not Fair Adequate And Reasonable.

Under Rule 23(e)(2) of the Federal Rules of Civil Procedure, a proposed class action settlement may only be approved if it is shown to be "fair, adequate and reasonable." In re Ins. Brokerage Antitrust Litig., 579 F.3d 241, 258 (3d Cir. 2009). In making this determination, the Court acts as a "fiduciary, guarding the claims and rights of the absent class members." Ehrheart v. Verizon Wireless, 609 F.3d 590, 593 (3d Cir.2010).

The need for the Court to protect the class in the context of a settlement has been explained as follows:

> Class-action settlements are different from other settlements. The parties to an ordinary settlement bargain away only their own rights—which is why ordinary settlements do not require court approval. In contrast, class-action settlements affect not only the interests of the parties and counsel who negotiate them, but also the interests of unnamed class members who by definition are not present during the negotiations. And thus there is always the danger that the parties and counsel will bargain away the interests of unnamed class members in order to maximize their own.

In re Dry Max Pampers Litig., 724 F.3d 713, 715 (6th Cir. 2013).

Because "class actions are rife with potential conflicts of interest between class counsel and class members . . . district judges presiding over such actions are expected to give careful scrutiny to the terms of proposed settlement in order to make sure that class counsel are behaving as honest fiduciaries for the class as a whole." In re Baby Products Antitrust Litig., 708 F.3d 163, 175 (3d Cir. 2013). Where, as here, the class has not been certified, the Court must review the settlement with an "even more rigorous, heightened standard." In re Pet Food Prods. Liab. Litig., 629 F.3d 333, 350 (3d Cir. 2010) (quotation omitted).

In the Third Circuit, courts consider the following nine factors ("the Girsh factors") in determining fairness of the settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In re Prudential Ins. Co. Am. Sales Practice Litig., 148 F.3d 283, 316 (3d Cir. 1998) (quoting Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) (internal quotation and editorial marks omitted)). The proponents of the settlement bear the burden of proving the fairness of the settlement. See In re Rent-Way Securities Litig., 305 F. Supp. 2d 491, 499 (W.D. Pa. 2003).

Class counsel have not submitted necessary information for this Court to evaluate the fairness of the settlement, and objection is made on that basis. See e.g., In re Baby Products Antitrust Litig., 708 F.3d 163, 175 (3d Cir. 2013) ("counsel did not provide information to the Court, preventing it from properly assessing whether the settlement was in the best interest of the class as a whole"); Martin v. Cargill, Inc., 295 F.R.D. 380, 386 (D. Minn. 2013) ("courts will reject requests for preliminary approval where the parties have proffered insufficient information to assess a settlement's fairness"). As the Third Circuit has observed, the fairness inquiry

> needs to be, as much as possible, practical and not abstract. If "the parties have not" on their own initiative "supplied the information needed" to make the necessary findings, the court should "affirmatively seek out such information." Making these findings may also require a court to withhold final approval of a settlement until the actual distribution of funds can be estimated with reasonable accuracy.

Baby Products, 708 F.3d at 175.[3] Class counsel's failure here to provide the necessary information is particularly objectionable here where class counsel was supplied with this information in February 2016, yet has not made it available to any objector prior to the time objections were required to be filed. Settlement Agreement, Doc. No. 73-1, pp. 20-21.

It also appears there has been no disclosure of the amount that will be or has been deducted from the common fund for costs of notice or settlement administration expenses. Given the nearly 3 million class members,[4] these costs will be considerable. There is no way to evaluate how much of the less than $18.4 million fund (after attorneys' fees and costs are deducted) will be left for the class. All that can be certain is that it will be far less than that amount.

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[3] See also Martin v. Cargill, Inc., 295 F.R.D. 380, 386 (D. Minn. 2013) ("And yet the parties seek the Court's blessing over their settlement, based primarily upon their *ipse dixit*—the proposed settlement is fair, adequate, and reasonable because they say so. The Court cannot approve a settlement on such a rocky foundation. Because "the existing record does not provide any evidence or methodology by which the Court can determine the class members' potential ranges of recovery or their chances of collecting a verdict," the Court is left "unable to make any reasoned assessment of the value of the claims" and, hence, is unable to approve the proposed settlement.").

[4] See Plaintiff's Memorandum, Doc. 73, at 1 ("The Settlement provides real benefits to almost three million Bank of America accountholders").

Yet, without even deducting these expenses, the average class member would appear to receive only $6 ($18.4 million / 3,000,000 class members = $6.13). As the fund continues to dwindle, the real value of the settlement may be the minimum $5 per member award contemplated in the settlement. This is inadequate given the breadth of impropriety by Bank of America.

There also appears to be inadequate information to compare the size of individual awards to the claimants' estimated damages. Baby Products, 708 F.3d at 174 ("one of the additional inquiries for a thorough analysis of settlement terms is the degree of direct benefit provided to the class. In making this determination, a district court may consider, among other things, . . . the size of the individual awards compared to claimants' estimated damages"). All that Objector could find concerning the estimated damages was Hassan A. Zavareei's conclusory declaration that he estimates the gross settlement fund "to represent between 13% and 48% of the maximum amount of damages they may have been able to secure at the class at trial."[5]

Similarly, class counsel have not disclosed anything about the residual cy pres, nor have they designated a charity. It is unknown at this stage how much, if any, will be taken from the remaining settlement fund, nor where it will go. "Class members

[5] Declaration of Hassan A. Zavareei in Support of Plaintiff's Unopposed Motion for Certification of a Settlement Class and Preliminary Approval of Class Action Settlement, Doc. 73-1, at 5.

are not indifferent to whether funds are distributed to them or to *cy pres* recipients, and class counsel should not be either." Baby Products, 708 F.3d at 178. Objection is made on this basis.

The diminutive relief provided, the scant information submitted and the information in class counsel's possession which has been withheld are all red flags signaling an unfair settlement. It must be remembered that the defendant is indifferent as to the allocation of any settlement payments between the class and class counsel. See, e.g., Malchman v. Davis, 761 F.2d 893, 908 (2d Cir. 1985) (Jon O. Newman, concurring), cert. denied, 475 U.S. 1143 (1986); In re Dry Max Pampers Litig., 724 F.3d 713, 717-18 (6th Cir. 2013). A settling defendant only cares about its total settlement payments and keeping them as low as possible. In re Southwest Voucher Litigation, 799 F.3d 701, 712 (7th Cir. 2015); Piambino v. Bailey, 757 F.2d 1112, 1139 (11th Cir. 1985) (when class counsel "negotiates simultaneously for the settlement fund and for individual counsel fees there is an inherent conflict of interest. The defendant . . . is 'uninterested in what portion of the total payment will go to the class and what percentage will go to the class attorney;' accordingly, the defense operates as no brake against the invidious effects of such a conflict of interest.") (quoting Foster v. Boise-Cascade, Inc., 420 F. Supp. 674, 686 (S.D. Tex. 1976), aff'd 577 F.2d 335 (5th Cir. 1978)).

At the same time, class counsel have a natural incentive to enrich themselves at the expense of the unnamed members of the class. See Southwest Voucher, 799 F.3d at 712 ("[j]udicial scrutiny of class action fee awards and class settlements more generally is based on the assumption that class counsel behave as economically rational actors who seek to serve their own interests first and foremost"). "For these actors, but not for the class members, the ideal settlement may be a moderate sum favorable to the defendant but disbursed mostly to class counsel." Id.

This Court must intervene here to protect the unnamed class members from these competing interests. The proposed settlement is not fair, adequate and reasonable and the proponents of this settlement have failed to discharge their burden of proof on the issue of fairness.

Intra-Class Conflicts And Adequacy of Representation.

While the settlement appears to provide $5 to $6 to the average class member, the parties have agreed to pay the class representative, Sherry Bodnar, a remarkable $20,000 service fee. This amount is unwarranted and excessive,[6] and unnecessarily reduces the benefits to the class even further. More importantly, Ms. Bodnar's disproportionate award relative to the typical class recovery reveals her as an inadequate representative.

It is well-established "that class representatives in class actions act as fiduciaries to the class." In re U.S. Bioscience Securities Litig., 155 F.R.D. 116, 120 (E.D. Pa. 1994) (citing In re Fine Paper Litigation, 632 F.2d 1081, 1086 (3d Cir.1980); Girsh v.

[6] In re U.S. Bioscience Securities Litig., 155 F.R.D. 116, 120-22 (E.D. Pa. 1994) (reducing incentive awards of $5,000 and $2,500, to $250 and $125, respectively).

Jepson, 521 F.2d 153 (3d Cir.1975)). In that capacity, they "undertake to represent not only themselves, but all members of the class, in a fiduciary capacity, and are obligated to do so fairly and adequately, and with due regard for the rights of those class members not present to negotiate for themselves." Women's Committee for Equal Employment Opportunity (WCEEO) v. National Broadcasting Co., 76 F.R.D. 173, 180 (S.D.N.Y. 1977). Significantly, "where representative plaintiffs obtain more for themselves by settlement than they do for the class for whom they are obligated to act as fiduciaries, serious questions are raised as to the fairness of the settlements to the class." Holmes v. Continental Can Co., 706 F.2d 1144, 1148 (11th Cir.1983) (quoting Plummer v. Chemical Bank, 91 F.R.D. 434, 441–42 (S.D.N.Y.1981), aff'd, 668 F.2d 654 (2d Cir.1982)). For example, "[i]f class representatives expect routinely to receive special awards in addition to their share of the recovery, they may be tempted to accept suboptimal settlements at the expense of the class members whose interest they are appointed to guard." U.S. Bioscience, 155 F.R.D. at 120 (quoting Weseley v. Spear Leeds & Kellogg, 711 F.Supp. 713, 720 (E.D.N.Y.1989)); accord Staton v. Boeing Company, 327 F.3d 938, 977 (9th Cir. 2003) (if "such members of the class are provided with special 'incentives' in the settlement agreement, they may be more concerned with maximizing those incentives than with judging the adequacy of the settlement as it applies to class members at large").

The $20,000 award here is way out of step with the class recovery. All of the concerns above are present here, compromising Ms. Bodnar's interests, and leaving her an inadequate representative of the class.

Additionally, objection is asserted to the extent the parties have not complied with the requirements of separate representation for intra-class conflicts as set forth in Rule 23(a)(4), Dewey v. Volkswagen AG, 681 F.3d 170 (3d Cir. 2012), and Ortiz v. Fibreboard Corp., 527 U.S. 815, 856-58 (1999). The settlement is structured to distribute funds pro rata based on the number of overdrafts charged to an account, with a minimum payment amount of $5.[7] This structure rewards account holders with a single overdraft (who may take more than their proportionate amount) while taking settlement benefits that would otherwise go to those with numerous overdraft charges. Objection is thus made to the extent there is not separate representation for these different groups with potentially conflicting interests. Each class should have "separate representation to eliminate conflicting interests of counsel." Ortiz, 527 U.S. at 856.[8]

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[7] Plaintiffs' Memo, Doc. 73, at 9.

[8] Accord John C. Coffee Jr., Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L. Rev. 1343, 1443 (1995) ("[P]robably the most disquieting phenomenon about recent mass tort settlements has been the acceptance of a single attorney acting as the representative of multiple subclasses .... Not only have the interests of these subclasses clearly conflicted, but the class counsel has explicitly traded off the interests of subclasses against each other, obtaining substantial compensation for one subclass in return for a waiver of cash compensation by another. In such multiparty negotiations between the defendants and different subclasses of plaintiffs, even the well meaning plaintiffs' attorney shifts inevitably from the role of an advocate and adviser for clients to the role of a philosopher king, dispensing largess among his client subjects... These intra-class trade-offs are, however, an endemic problem that transcends the asbestos context. Any settlement that awards compensation by disease or injury classification creates potential allocation issues: should the compensation for one subclass be raised and correspondingly that for another lowered?").

Class Counsels' Fee Request Is Excessive.

Class counsels' requested 33% of the gross settlement fund, which would provide them more than $9 million plus costs ($27,500,000 x .33 = $9,075,000), should not be approved by this Court. Objector submits this exorbitant award will be more than half the amount of the net benefit to the class once settlement administration and notice expenses are deducted.

"Where a district court has reason to believe that counsel has not met its responsibility to seek an award that adequately prioritizes direct benefit to the class, . . . [it is] appropriate for the court to decrease the fee award." Baby Products., 708 F.3d at 178 (citations omitted). While there is insufficient information to accurately assess the real value of the settlement to the class, there is enough to see that 33%, more than $9 million, is far too much relative to the class recovery.

Class counsel have set forth *no reason* for this Court to exceed the 25% benchmark for common fund settlements. See e.g., Seidman v. American Mobile Sys., 965 F.Supp. 612, 622 (E.D.Pa.1997) ("[a]lthough no general rule exists as to what is a reasonable percentage, courts have found that an award of 25% of the common fund is ordinarily reasonable."); Lazy Oil, Co. v. Witco Corp., 95 F.Supp.2d 290, 342–43 (W.D.Pa.1997) (noting a range of 20–27% fee awards in cases that settled for $20–30 million, and awarding attorneys' fees in the amount of 28% of the $18.9 million settlement fund). Further, given the unfair settlement obtained, the fee award should fall well below 25%. First State Orthopaedics v. Concentra, Inc., 534 F.Supp.2d 500

(E.D.Pa.2007) ("Many courts have considered 25% to be the benchmark figure for attorney fee awards in class action lawsuits, with adjustments up or down for case-specific factors ...").

In fact, cases in the Third Circuit provide a basis for this Court to rule class counsel's recovery percentage should be substantially less than 25%. Fitzgerald v. Gann Law Books, 2014 U.S. Dist. LEXIS 174597 (D.N.J. Dec. 17, 2014) (awarding $421,577 in fees from a settlement fund valued at $3,026,290; 14%); Frederick v. Range Resources – Appalachia, LLC, No. 08-288, 2011 WL 1045665 (W.D. Pa. Mar. 17, 2011) (awarding $4,650,382 in fees from a settlement fund valued at $22 million; 20.58%); Stop & Shop Supermarket Co. v. SmithKline Beecham Corp., No. 03-4578, 2005 WL 1213926 (E.D. Pa. May 19, 2005) (awarding $20 million in fees from a settlement valued at $100 million; 20%); Weiss v. Mercedes-Benz of North America, 899 F. Supp. 1297, 1304 (D.N.J. 1995) (awarding $11,250,000 in fees against a settlement valued at $75 million; 15%); Muchnick v. First Federal Savings & Loan Association, No. 86-1104, 1986 U.S. Dist. LEXIS 19798 (E.D. Pa. Sept. 30, 1986) (awarding $250,000 in fees against a settlement valued at $4-6.8 million; 3.7-6.25%).

Although not binding precedent, it is useful to consider the district court's order in Hawthorne v. Umpqua Bank, 11-CV-06700-JST, 2015 WL 1927342, at *4-6 (N.D. Cal. Apr. 28, 2015) (unpublished opin.). In Hawthorne, counsel secured a $2.9 million common fund settlement in a case against a bank which, as here, improperly charged overdrafts. As in this case, class counsel sought 33% of the common fund, which amounted to $957,000. Despite the fact that "class counsel expended a significant amount of time and effort litigating . . . [the] case over . . . three years and undertook a major risk by taking it on a contingency fee basis[,]" these were not special considerations that warranted adjusting the presumptive 25% award upward. Id. at *5. While "class counsel engaged in motion practice, amended the operative complaint three times, . . . engaged in discovery and mediation[,] . . . and survived two dispositive motions, this simply reflects the ordinary nature of the adversarial process of litigation." Id. "In the aggregate, Plaintiffs' counsel recovered about a third the amount they could have recovered if they had prevailed at trial. This result . . . is not an 'exceptional' or 'unusual' award." Id. Accordingly, the district court in Hawthorne denied the request for 33% and instead adhered to the 25% benchmark. Id. at *6. The excess amount was added to the settlement fund to be distributed to the class members. Id.

Hawthorne leaves no doubt that the 33% requested in this case is patently excessive. This case was on file for less than a year before settlement negotiations commenced, and was litigated just a few months over a year, as opposed to the three years of litigation in Hawthorne. The recovery relative to the value of the claims will potentially be far less here (13%) relative to the 1/3 recovery in Hawthorne. Further, the fact that the class action is much larger here only supports a lower percentage of recovery.

Additionally, given the relative brevity of this litigation and the high percentage sought by class counsel, Objector urges that a lodestar cross-check is absolutely essential here. Baby Products, 708 F.3d at 176-77. The Third Circuit recognizes that "it is sensible for a court to use a second method of fee approval to cross check its initial fee calculation." In re Prudential., 148 F.3d at 333. Objection is further made to the extent class counsel have failed to provide any lodestar documentation, which impedes this Court from fulfilling its duty to ensure a reasonable fee.

Objection is also made in that there is no procedure in place for any objector to object to Class counsel's motion for attorneys' fees and costs.

Finally, objection is made to the extent a lump sum attorneys' fees award is made to multiple firms without judicial allocation of the funds. See In re High Sulfur Content Gasoline Prods. Litig., 517 F.3d 220, 227–28 (5th Cir. 2008); In re "Agent Orange" Prods. Liab. Litig., 818 F.2d 216, 223 (2d Cir. 1987).

CONCLUSION

Objector requests that this settlement be rejected. In the alternative, Objector requests that the proposed award of attorneys' fees be rejected or, at minimum, substantially reduced.

DATED: June 6, 2016

Respectfully submitted,

/s/ Glenn A. Manochi
Gary P. Lightman, Esquire
Glenn A. Manochi, Esquire
1520 Locust Street, 12th Floor
Philadelphia, PA 19102
(215) 545-3000/3001 (fax)

Attorneys for Objector Dawn M. Weaver

For the foregoing reasons, I object to this settlement.

DATED: June 2, 2016

Dawn Weaver
208 Via Morella
Encinitas, California 92024

EXHIBIT

"A"

DECLARATION OF DAWN WEAVER IN SUPPORT OF OBJECTIONS TO CLASS ACTION SETTLEMENT IN *SHERRY L. BODNAR V. BANK OF AMERICA, N.A.*, CASE NO. 5:14-cv-03224-EGS

Comes now DAWN WEAVER and states the following under oath and under penalty of perjury in support of her objection:

"My name is Dawn Weaver. I am over the age of eighteen (18) years. I have never been convicted of a felony. I am qualified and competent to make this affidavit."

The facts stated herein are within my personal knowledge."

"My current address is 208 Via Morella, Encinitas, California 92024. My cellular telephone number is (858) 829-3659 and my email is weavdm@gmail.com."

"I am a person in the United States who had a Bank of America consumer checking account in the United States; and was charged Overdraft Fees between May 25, 2011, and February 5, 2016, on transactions that were authorized and approved when sufficient funds were available to cover the amount of authorization, therefore I am a Class Member.

"Attached as Exhibit 1 is a true and correct copy of the postcard notice I received."

"I have not opted out of the Settlement."

"I object to the proposed settlement of *Sherry L. Bodnar v. Bank of America, N.A.*, 5:14-cv-03224-EGS for the reasons stated in my objection."

"I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this the 2nd day of

June, 2016, at Encinitas, California."

Dawn Weaver

EXHIBIT

"1"

Bank of America Overdraft Litigation
PO Box 4178
Portland, OR 97208-4178

PRESORTED
FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

Legal Notice about a Class Action Settlement

873611235342

DAWN M WEAVER
208 VIA MORELLA
ENCINITAS, CA 92024-5390

11
3678

If You Paid Overdraft Fees on Debit Card Transactions to Bank of America, You May Be Eligible for a Payment from a Class Action Settlement.

A Settlement has been reached in a class action lawsuit claiming that Bank of America breached its contract with consumer checking Account holders and unfairly assessed and collected Overdraft Fees on certain Debit Card transactions. Bank of America maintains it did not breach its contract and treated Account holders fairly. The Court has not decided which side is right.

Who's Included? Bank of America's records show you are a member of the Settlement Class. The Settlement Class includes anyone who: (1) had a Bank of America consumer checking Account in the United States; and (2) was charged Overdraft Fees between May 25, 2011 and February 5, 2016, on transactions that were authorized and approved when sufficient funds were available to cover the amount of authorization.

What Are the Settlement Terms? Bank of America has agreed to establish a Settlement Fund of $27.5 million. Once the Court approves the Settlement, you will *automatically* receive a payment or Account credit for Relevant Overdraft Fees paid during the period covered by the Settlement.

Your Other Options. If you do not want to be bound by the Settlement, you must exclude yourself by **June 6, 2016**. If you do not exclude yourself, you will release your claims against Bank of America. You may object to the Settlement by **June 6, 2016**. The Long-Form Notice available at the Settlement website, listed below, explains how to exclude yourself or object. The Court will hold a hearing on **August 3, 2016**, to consider whether to approve the Settlement and a request for attorneys' fees up to 33% of the Settlement Fund and a Service Award for the Plaintiff. You may appear at the hearing, but you don't have to. You may hire your own attorney, at your own expense, to appear or speak for you at the hearing.

03631 v.02 02.29.2016

www.BankofAmericaOverdraftSettlement.com • 1-866-960-5963

CERTIFICATE OF SERVICE

The undersigned certifies that today he filed the foregoing objection and associated exhibits on ECF which will send electronic notification to all attorneys registered for ECF-filing. The undersigned further certifies he caused to be served via USPS First Class Mail, postage prepaid, a copy of this Objection and associated exhibits upon the following.

Bank of America
Overdraft Litigation
P.O. Box 4178
Portland, OR 97208-4178

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Michael B. Miller
Morrison & Foerster LLP
250 W. 55th St.
New York, NY 10019

DATED: June 6, 2016

/s/ Glenn A. Manochi
Glenn A. Manochi

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